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C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 000451

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SUBJECT: CHINA'S NEW CHARITY LAW ON THE HORIZON; CONTACTS
HOPEFUL NPC WILL PASS THIS YEAR

REF: 09 BEIJING 2733

Classified By: Political Section Chief Aubrey Carlson
for reasons 1.4 (b)(d).

¶1. (C) Summary: Draft legislation to promote charitable organizations and foundations in China is on the National People's Congress (NPC) agenda for this year, according to several contacts. The Ministry of Civil Affairs (MOCA) has sponsored a draft national Charity Law and has encouraged provincial governments to enact similar statutes. For example, Jiangsu province recently passed new legislation governing charities to take effect May 1, and the Beijing municipal government is considering similar measures. Potential changes include expanding the definition of what constitutes a charitable organization, ending the widespread practice of forcing corporations to donate to government-affiliated charities, and creating a direct filing system to streamline registration of non-profit entities. However, contacts caution the Charity Law would not lead to fundamental changes in the strict government supervision of civil society. The definition of "charity" will still be narrow, and faith-based charities are unlikely to receive formal recognition. End Summary.

Bill in Sight, Passage Likely

¶2. (C) The Charity Law "is in the legislative track" for 2010, Pei Bin (protect), director of the Beijing office of Business for Social Responsibility (BSR) and a former Ministry of Civil Affairs (MOCA) official, told PolOff February 8. As of February, the draft legislation was with the State Legislative Affairs Office and would soon pass through a series of markup sessions before heading to the National People's Congress (NPC) for a vote. Although the working draft has not been made public, Pei Bin had been told that it was "very likely" the draft legislation would be published to solicit feedback. In a meeting with PolOff February 11, Wang Zhenyao, Director General of MOCA's newly created Department of Social Welfare and Promotion of Charities, said that he thought the NPC would likely pass the Charity Law in 2010. Not all contacts were so optimistic. Liao Anxi (protect), a program officer at The Asia Foundation (TAF) noted February 4 that a precursor to the current draft legislation had been sent to the State Council in 2006 and, after thorough revision, placed on the NPC calendar for 2008 but never became law. Liao said the current version would likely undergo a similarly lengthy process of revision, so passage this year was far from certain.

Potential Breakthroughs

¶3. (C) According to Pei Bin, the Charity Law, as currently drafted, would usher in three important changes. It would widen the legal definition of a charity in China to include public entities in addition to non-profits. It would

prohibit local governments from forcing corporations to donate money to government-affiliated charities, a common practice. Only charitable organizations would be able to solicit donations, and these organizations would be required to adhere to information disclosure guidelines about funds received. The central government hoped this measure would encourage more transparency in the business sector. Finally, the dual-management system (under which an NGO must first obtain a formal government sponsor to legally register and operate) would give way to simplified registration, which was already underway as part of a pilot program in Shenzhen. Such reforms would diminish the current policy "disconnect" between forcing corporate social responsibility on one hand while restricting charities on the other, commented Nancy Kim (protect), TAF deputy country representative in Beijing.

After Quake, Government Realizes NGO Benefits

¶4. (C) MOCA was the most open-minded government entity when it came to promoting and expanding the role of charities in Chinese society and was "pushing the Charity Law hard," said TAF's Liao. MOCA's Wang confirmed that his ministry was indeed lobbying for quick passage, though he noted that promotion of charities and NGOs in general did not necessarily require new legislation since MOCA's internal rules affected the situation on the ground more than formal changes of law. In fact, Wang said, most internal rules for managing NGOS were not written and how tightly NGOs were controlled varied greatly depending on which government agency had oversight over a particular group. For example, Wang said, he took a hands-off approach to NGOs that were

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partnered with his agency because he believed civil society could only advance with less government interference. As such, pairings between NGOs and his department were in name only, giving these organizations de facto independence. The next step was to start pairing grassroots NGOs with larger organizations such as the Red Cross or chambers of commerce and allow them to register. Under this model, Wang said, there would be no government sponsor, only an established mentor organization to oversee the healthy development of upstart NGOs.

¶5. (C) The 2008 Sichuan earthquake catalyzed both corporate and individual charitable giving in China, contacts agreed. This tragedy was a "watershed moment" for civil society, especially small grassroots NGOs and foundations, because government officials saw the practical benefits these groups could deliver firsthand, Wang remarked. Civil society groups had responded immediately, and telephone calls from NGO leaders began pouring into Wang's office. Wang gave them permission to enter the disaster area without formal approval because he knew any delay would have rendered their assistance useless. Although a self-described "liberal insider," Wang believed he was not alone among Chinese cadres in his support for a more independent civil society. Many other officials backed a more open approach to social service NGOs and charitable organizations because they "know the needs" of local people and were better equipped to provide services in areas where the government was falling short, thus contributing to social stability. Obsessed with "showing a strong face" to the outside world, the Chinese leadership was neglecting internal problems such as crushing rural poverty, a rapid aging of society, left-behind children of migrant workers, labor unrest, and other destabilizing factors, Wang observed.

Local Governments a Step Ahead

¶6. (C) MOCA, contacts said, had been encouraging regulatory innovation among provincial governments in the absence of a nationwide Charity Law. With the most to gain from outside social service organizations, charities and foundations, most

local governments considered rules that an NGO had to obtain a formal government sponsor to legally register and operate to be "stupid," quipped BSR's Pei Bin (reftel). Local experimentation was common when a given system was broken at the national level, she added. For example, Shenzhen had implemented fast-track NGO registration in limited sectors such as commerce, social welfare and philanthropy. This "Shenzhen model" won a local governance award, and Beijing's municipal government was in the process of following suit by hiring NGOs as contractors to provide social services and promising to help charitable NGOs find government sponsors and register within 20 days, noted TAF's Liao. Jiangsu province, meanwhile, had approved a lengthy set of "charitable sector promotion regulations" to take effect on May 1. The Jiangsu regulations would ban unaffiliated individuals or agents from soliciting donations on behalf of an organization, a move Liao believed was an anti-fraud measure and not politically motivated. The Beijing municipal government had drafted formal Jiangsu-style charity regulations with hopes of passage at the 2010 municipal congress, Liao told PolOff February 4.

"Don't Expect Too Much"

¶7. (C) Although contacts said passage of a new Charity Law would be an important step in the development of civil society in China, they warned that China's leaders would continue to remain suspicious of NGOs. TAF's Liao cautioned that foreign observers should not "expect too much" from the Charity Law. The bill's effect would likely be watered down by multiple revisions, she pointed out, and the legal concept of what constituted charity would likely remain very narrowly defined. There "had not even been discussion" of faith-based charities, saying the issue of allowing religious charities to register was "off the table," and educational and environmental NGOs might also be excluded under the Charity Law, Liao said. Furthermore, the Charity Law would contain only principles, not specifics. As with any legislation in China, the true impact of the Charity Law would be felt through implementation rules, which were yet to be decided, Pei Bin concluded.

HUNTSMAN